

(I)

JOHN EYRE, Esq;-----

Appellant.

LAUGHLIN DALY, Gent.

Respondent.

The Respondent's CASE.

HUGH Daly, the Respondent's Grandfather, being seiz'd in Fee of the Lands of *Killeiveny Ballyconse* and other Lands in the County of *Galloway*, in the Kingdom of *Ireland*, of the yearly Value of 100 l. or thereabouts, did, by two several Deeds indented, mortgage the same to *John Eyre* the Elder, Esq; the Appellant's Grandfather, for the Sum of 52 l. redeemable at any time, on Repayment of the said Mortgage-Money, with the Interest thereof, and dy'd sometime after, leaving Issue *Teige Daly* his eldest Son and Heir.

BY Deed indented, reciting the aforesaid Mortgages made by the said *Hugh Daly*, and that the said *Teige Daly* had by two other Conveyances mortgaged the said Lands to the said *John Eyre* the Elder, for the further Sum of 64 l. the said *Teige Daly*, in Consideration of the further Sum of 42 l. therein mentioned to be to him paid by the said *John Eyre* Senior, did grant and agree that the said *John Eyre* Senior, his Heirs and Assigns, should stand seized of the said Lands until the said several Sums, and all other Sums that should afterwards be lent by the said *John Eyre* Senior unto the said *Teige Daly*, should be fully paid and satisfied in one entire Payment.

THE said *Teige Daly* having four Sons (*viz.*) *John*, *Edmund*, *Anthony*, and *Laughlin*, the Respondent who was his youngest Son, and the said *John*, *Edmund*, and *Anthony* proving very undutiful to the said *Teige Daly* their Father, he by Deed of Lease and Release conveyed all the said Lands to certain Trustees and their Heirs to the Use of himself for Life, without Impeachment of Waste, Remainder to the Respondent in Tail-Male, with Remainder to him in Fee.

THE said *Teige Daly* died Intestate, leaving a personal Estate to the Value of 500 l. which *John Eyre* Junior, Son and Heir of the said *John Eyre* Senior, and Father of the Appellant, possess'd and converted to his own Use, and the Respondent being but eight Years of Age at his Father's Death, the said *John Eyre* Junior got into Possession of the said mortgaged Lands, and received all the Rents and Profits thereof until his Death.

THAT the Deeds, and other Writings relating to the said Estate, being deposited by the said *Teige Daly* the Respondent's Father in the Hands of *Anthony Daly* the Respondent's Uncle for his Use, the said *Anthony Daly* did soon after the Death of the Respondent's Father deliver some of the said Deeds to the said *John Eyre* Junior, and concealed the rest of them for a considerable Time from the Respondent, by the Management of the said *John Eyre* Junior.

THE Respondent having, as advis'd, in some time after his Father's Death apply'd to the said *John Eyre* Junior, for the Possession of the said mortgaged Premises, and for an Account of the Rents and Profits thereof, and also for an Account of the said personal Estate; the said *John Eyre* Junior thereupon informed the Respondent and his Friends that an Act of Parliament was then passing in *England*, in relation to the forfeited Estates in *Ireland*, and that, in regard the Respondent had an elder Brother in the *French* Service, it would be the Respondent's Interest to suffer the said *John Eyre* Junior to continue in Possession of the said Lands for some time longer, and that he would protect the same in Trust for the Respondent; but notwithstanding the said fair Promises so made by the said *John Eyre* Junior, and that he well knew that neither the Respondent nor his said Father were forfeiting Persons in any Respect; yet the said *John Eyre* Junior, with a Design to defraud the Respondent, and to deprive him of his Right or Equity of Redemption, insinuated to the Trustees of the *Irish* forfeited Estates, that the said Lands were forfeited, and exhibited a Claim before them for several Sums of Money pretended to be still due to him out of the said Lands, although he had then really received much more out of the said Lands, and the said personal Estate of the Respondent's Father, than the said Mortgage-Money and the Interest thereof amounted unto.

THE Respondent, being informed of the said *John Eyre* Junior's unfair Proceedings, declared to him that he would lay all the said Matters open before the said Trustees, and shew them that nothing was due on the said Mortgages, and that no Forfeiture had been incurred; whereupon the said *John Eyre* Junior assured the Respondent that he had exhibited the said Claim by way of Caution only, and for the Respondent's Benefit, and that whatever Bargain or Agreement he should make with the said Trustees should be in Trust for the Respondent, and accordingly the said *John Eyre* Junior did execute a Deed to the Respondent, bearing Date the 8th Day of *March* 1700, whereby the said *John Eyre* Junior promised and agreed that he would at any time, on the Respondent's paying him what should appear to be due to him for Principal, Interest and Cost, suffer the Respondent to redeem the said Lands, and the said *John Eyre* Junior thereby also declared that on the Respondent's paying such Sums as aforesaid, whatever he the said *John Eyre* Junior should transact with the said Trustees in relation to the said mortgaged Lands, should be in Trust for the Respondent, and no body opposing the said *John Eyre* Junior, his Claim was allowed by the said Trustees, and although the said *John Eyre* Junior was fully satisfied that no Forfeiture had been incurred by the Respondent or any of his Ancestors, and, that consequently the said Trustees had no Right to the said Premises, yet he obtained a Conveyance thereof from the said Trustees for a trifling Consideration.

THAT the said *John Eyre* Junior, notwithstanding his said Agreement, not only refused to come to a fair Account with the Respondent, and to deliver him Possession of the said Lands, but also made Leases for Lives of all, or the greatest part of the said Lands at an Under-value, and thereby lessen'd the yearly Rent thereof, and the Respondent being then a Minor and very indigent, and the said *John Eyre* being a Member of Parliament in *Ireland*, and insisting upon his Privilege, kept Possession of the said Lands until his Death.

THAT by an Act of Parliament made in *England*, intitled an Act for the Relief of the Protestant Purchasers of the forfeited Estates in *Ireland*, it was enacted that all Papists should be disabled to purchase any of the forfeited Lands in *Ireland*, and that all Conveyances and Declarations of Trust concerning the same which should be thereafter made, suffered, or done to or for the Use, Benefit, and Behoof of any Papist, should be utterly void and of none effect.

THAT

6 Annæ.

THAT by another Act of Parliament made in *England* for limiting the Time to Persons to make their Claims to Lands sold by the said Trustees, It was enacted, that all Persons who should claim or pretend any Right or Title to any of the Estates purchased from the said Trustees, or any Interest therein, or any Incumbrance thereupon, either at Law or in Equity, on pretence that the same were not vested in the said Trustees, should Commence, Sue and Prosecute such their Claims and Pretensions within two Years, to be computed from the 24th Day of *June* 1708, in one of the Courts of Record in *Ireland*, and in Default thereof should be for ever absolutely debarred, and without Remedy either at Law or in Equity.

July 1709.

THAT the said *John Eyre* Junior dying Intestate, *George Eyre* his eldest Son, Heir and Administrator, entered upon, and possessed himself of the said Mortgaged Lands; and being also a Member of Parliament in *Ireland*, insisted likewise upon Privilege, and so kept Possession of the said Lands during his Life.

The said *John Eyre* the Elder, the Appellant's Grandfather, having settled his Estate of 2000 *l. per Ann.* and charged the same with 1000 *l.* as a Portion for his Daughter *Ann Eyre*, afterwards married to Colonel *Richard St. George*, the said *John Eyre* Junior, the Appellant's Father, in order to pay off the said Portion, borrowed 1000 *l.* of *Henry Davis*, Esq; who took an Assignment of the Original Securities, by which the said Portion was settled and secured; and the said *Henry Davis* afterwards calling for his Money, the said *John Eyre* Junior, the Appellant's Father, desired the said *George Eyre* his Son to raise the said Sum on his own Security, and in Consideration thereof agreed to assign or make over to the said *George Eyre*, a Lease of the Town and Lands of *Meelick*, which was very beneficial; whereupon the said *George Eyre* raised the said 1000 *l.* on his own Security, from *Hercules Davis*, Esq; and paid the same to the said *Henry Davies*, in Consideration whereof the said *John Eyre* Junior, the Appellant's Father, accordingly assigned the said Lease of *Meelick* to the said *George Eyre*.

November 24, 1710.
Tripartite Deed.

THE said *Hercules Davis* pressing for his Money, the said *George Eyre* borrowed 1000 *l.* from the Bishop of *Clonfert*, for which the Appellant, and *Giles Eyre* his younger Brother, at the Request of his said Brother *George Eyre*, became jointly bound with the said *George Eyre*, and likewise for 118 *l. 2 s. 4 d.* being the Interest-Money which became due thereon to the said *Hercules Davis*, in Consideration whereof, and for Counter-securing the said Appellant and the said *Giles Eyre*, the said *George Eyre* did, as the Appellant insists, by Indenture Tripartite, bearing Date the 24th of *Nov.* 1710, convey the said Lands in Question (*inter alia*) to certain Trustees in Fee, in Trust in the first Place to pay the said Debts, and then to the Use of himself for Life, Remainder to his first and other Sons in Tail-Male successively, subject to the said Debts, Remainder to the Appellant for Life, with Remainders in Tail-Male successively to his first and other Sons, and the said *George Eyre* did for the same Consideration thereby assign the said Lease of *Meelick* to the Appellant.

March 1710.

THE said *George Eyre* died Intestate, and without Issue-Male; whereupon the Appellant *John Eyre*, second Son and Heir of the said *John Eyre* Junior, and Heir Male under his said Grandfather's Settlement, entered on the said Lands so settled by his said Grandfather, and upon the said mortgaged Lands, and has enjoyed the same ever since, and also the said Lease of *Meelick*.

Respondent's Bill in
Forma Pauperis, May
28, 1711

THE Respondent exhibited his Bill in *Forma Pauperis* in the Court of Chancery in *Ireland*, against *John Eyre* the Appellant, *Ann Lady Lowth* Administratrix of the said *George Eyre*, and others, and thereby prayed a Redemption and Possession of the said Mortgaged Lands, insisting that the same were not vested in the said Trustees; and also insisting on the said Declaration of Trust made by the said *John Eyre*, the Appellant's Father, to the Respondent as aforesaid, and further pray'd an Account of the Rents and Profits of the Premises and Relief in general.

Appellant's Plea and
Answer, December 10,
1711.

THE Appellant put in a Plea and Answer to the said Bill, and in his Answer set forth, that the said Trustees allow'd that there was due to his Father upon the said Estate the 3d Day of *December* 1700, the Sum of 299 *l. 14 s. 9 d.* and for Plea insisted, that the Respondent having never claimed any Right or Title to the Premises before the said Trustees, and that the Equity of Redemption of the Premises being by Virtue of the Act of Reassumption vested in the said Trustees, and the said Trustees having by their Deed, bearing Date the 18th Day of *June* 1703, for a valuable Consideration bargained and sold unto the Appellant's Father and his Heirs, all the said Lands as the late Propriety of *Teige* and *Hugh Daly*, subject to the Claims allow'd thereon, the said *John Eyre* Junior, the Appellant's said Father, thereby became absolutely seized of the said Premises, and enjoy'd the same until his Death, and the Appellant further insisted, that if the said Sale was in Trust for the Respondent, or if the Respondent had obtained such Deed of Trust from the Appellant's Father as in the Respondent's said Bill is set forth, the said Trust was void, the Respondent being a Papist, and that the Premises, after the Appellant's Father's Death, descended to *George Eyre*, his eldest Son, who entered upon and possess'd the same: But that the Respondent though of full Age on the 24th of *June* 1708, did not commence or prosecute any Claim or Pretence to the Premises within two Years, from the 24th of *June* 1708; and the Appellant also pleaded the said Indenture Tripartite, dated the 24th of *November* 1710, and that the said *George Eyre* having died without Issue-Male, the Appellant entered upon the said Lands, and that he was a Purchaser for a valuable Consideration of the said Lands without Notice of the Respondent's Title, and the Appellant likewise pleaded the said Act of Parliament made in *England* for Relief of the Protestant Purchasers of the forfeited Estates in *Ireland*, and also the said other Act for limiting Time to Persons to commence and make their Claim to any of the said Forfeited Estates and other Interests in *Ireland*, sold by the said Trustees; but the Appellant did not in his said Plea set forth the said Acts, or the Matters thereby enacted.

Appellant's Plea argued
February 1st, and 4th,
1711.Respondent's Supple-
mental Bill, Novem-
ber 16, 1714.

THE said Plea being argued, was allowed, but the Respondent was at Liberty to reply to it, and except to the Answer.

THE Respondent exhibited a Supplemental Bill against the Appellant, the Lady *Lowth* and others; setting forth the Substance of the said Original Bill and Plea, and further, that the said *John Eyre*, the Appellant's Grandfather, being seized in Fee of an Estate of 2000 *l. per Ann.* made a Settlement thereof, and charged the same with 1000 *l.* as a Portion of the said *Ann Eyre* his Daughter, afterwards married to Colonel *St. George*; and also set forth the several other Transactions herein before mention'd, relating to the shifting and changing of the said Securities for the said 1000 *l.* and insisted that the Appellant ought not in a Court of Equity to take Advantage of any Security he might have had for the said 1000 *l.* in regard it was a Charge on his Father's Estate which came to the Appellant, and that the said mortgaged Lands were never forfeited or vested in the said Trustees, and that the Respondent's Father continued in Possession thereof until his Death.

Appellant's Plea to
the said Supplemental
Bill, June 13, 1715.

THE Appellant pleaded to the said Supplemental Bill, and in this Plea recited the Substance of his former Plea to the Respondent's said Original Bill, and that the same Plea being argued, was allowed and enrolled, and the Appellant also pleaded the said former Plea, and the Enrolment thereof, in Bar of the Relief prayed by the said Supplemental Bill, which Plea being argued was over-ruled. THE

Appellant's Answer to
said Supplemental
Bill February 1716.

THE Appellant put in his Answer to the said Supplemental Bill, and therein confessed that his said Grandfather charged his Estate with a Portion for his said Daughter *Ann Eyre*, and that 1000*l.* part of it remaining due at the Time of her Marriage with Col. *St. George*, the same was secured to Sir *George St. George* the Father of the said Col. *St. George* upon the said Estates, and set forth the several Securities that had been given from Time to Time for the said 1000*l.* and confessed that for the said Consideration before mentioned the said *George Eyre* had executed the said Deed tripartite, and that the said Leases of *Meelick* were for the same Considerations assigned to him, by the said Deed, and that he believed the Respondent's Father continued in Possession of the said mortgaged Lands until his Death.

on hearing 16th
Jan. 1719.

ISSUE being joined, Witnesses examined and publication passed; the said Cause came to be heard before the Lord Chancellor of Ireland, who after a full Hearing decreed that the Respondent should be let in to redeem the mortgaged Premises, and that it should be referred to *Edward Lyndon Esq.* one of the Masters of the said Court, to take an Account of what was due for Principal and Interest on the said Mortgage, as also of the Issues and Profits of the said mortgaged Premises since the same came into the Possession of the said *John Eyre*, the Appellant's Father, and likewise an Account of what Money the Appellant really paid to the Bishop of *Clonsfert*, and the said *Hercules Davis*, for the said *George Eyre*, and of what the Appellant received out of the Estate of the said *George Eyre*, which he had for a further Security for the Moneys so paid by him, and further that the said Master should take an Account of the personal Estate of the said *George Eyre*, which came to the Appellant's Hands, and that both Parties should have all just Allowances, and his Lordship reserved all further Directions, and the Considerations of Costs, until the Master should make his said Report.

Appeal lodged
Jan. 1719.

THAT the said Master proceeding on the said Account pursuant to the said Decree, the Appellant appealed to your Lordships from the said Decree, with a Design to delay the said Master's Proceedings thereon; and the Respondent being served with your Lordships Order of Summons, used his utmost Endeavours to bring the said Appeal to be heard before your Lordships the same Session; but being in a very poor Condition, and unable to bear, either the Expences of a Journey from Ireland to London, or the Charges of taking out attested Copies of all the Pleadings in this Cause without the charitable Assistance of some good compassionate Friends, he was obliged upon that Account to wait so long in Ireland, that he did not arrive in London till about the beginning of the Session following, when he put in his Answer to the said Appeal; and the Appellant having delayed and neglected to proceed further, or to make any Application for a Day to hear the said Appeal as usual, the said Appeal was for that Reason dismissed by a standing Order of your Lordships House for that Purpose.

Appellant's Answer
Jan. 1720.
Appeal dismissed 6th
Feb. 1721.
May, 1722.

THE said Order of Dismissal being made an Order of the Court of Chancery in Ireland, the Respondent proceeded on the said Account before the said Master, but the Appellant, apprehending that it would appear plainly on the said Account that the said Mortgage had been long since fully satisfied by the Perception of the Rents and Profits of the Premises with a great Overplus, lodged a second Appeal to your Lordships in the same Words with his former Appeal.

second Appeal lodged
16th October 1722.
Appellant's 2d An-
swer 8th March 1722.

THAT the Respondent, was thereupon oblig'd (notwithstanding his low Circumstances) to come a second time from Ireland to London, and to put in an Answer to the said second Appeal.

THAT the Respondent finding that the Appellant also brought the said second Appeal merely for Delay, and that he did not really intend to proceed to a Hearing, applied to your Lordships on the 20th of April, 1723, and obtained an Order for hearing the said Appeal on the 24th Day of May then next following, but the same was not heard that Session.

second Appeal
dismissed 3d March

THAT no Application being made by the Appellant within the first eight Days of the next Session for a Day to hear the said Appeal, the Respondent being then in Ireland, and not able to come to London in due time, the said Appeal was again dismissed; and the Respondent having returned from Ireland to London to attend the Hearing of the said Appeal, and finding the same was dismissed, took out the said Order of Dismissal, and returned to Ireland with the same, which said last mentioned Order of Dismissal being also made an Order of the Court of Chancery in Ireland, the Respondent proceeded on the said Account before the said Master, but the Appellant still designing and endeavouring to harass and tire the Respondent, delayed giving in any Answer to the Respondent's Charge, and attending the said Master; wherefore the said Court of Chancery in Ireland, on representing the said Matters, ordered on the 11th of February, 1724, that the Appellant should attend the said Master in Four Days, and that in default thereof the said Master should proceed *ex parte* on the said Reference, and yet notwithstanding the said Order, and that the Respondent took out several Warrants from time to time from the said Master to proceed on the said Reference, the said Appellant did not give in, or lay before the said Master, any Answer to the Respondent's said Charge, nor his the said Appellant's Charge against the Respondent, till the 8th of Dec. 1726, when the Master having, in Presence of the Appellant's Six-Clerk and Agent, proceeded on the Respondent's said Charge against the said Appellant; and having gone through the same, and no Attendance being given by the Appellant, his Clerk, or Agent, to support the Appellant's said Answer to the Respondent's Charge, nor to support the Appellant's said Charge against the Respondent, the said Master proceeded, and pursuant to the said last mentioned Order, reported *ex parte*, that there was due to the Respondent, from the Appellant, for the Issues and Profits of the said mortgaged Premises, to the 1st of May 1726 Inclusive, over and above what cleared and discharged the said Principal, Mortgage and the Interest thereof, the Sum of 983*l.* 15*s.* for which the said Appellant is accountable to the Respondent.

15*s.* due to the
Respondent from the Ap-

This Report was
made and entered in
the proper Office in the
Court of Chancery in
London, six Days after
the said Appeal was
made, but before the
Respondent could by
his said Charge, the
said Appeal.

AND the said Master further reported, that although the Appellant did, by his said Charge against the Respondent, alledge that he paid the said several Sums of 1000*l.* and of 118*l.* 2*s.* 4*d.* to the said Bishop of *Clonsfert* and *Hercules Davys*; and that the Respondent, in Answer thereto, did lay a Charge before him of the Appellant's having received the Sum of 4879*l.* by the Issues and Profits of the said Lands of *Meelick*, which was the Estate of the said *George Eyre*, and stood as a farther Security to the Appellant, for the said Sum; yet the Appellant, not having laid before the said Master any Proof to support his said Charge, the said Master could not take any Account thereof, nor of the personal Estate of the said *George Eyre*.

second Appeal Feb.

THE Appellant, further to vex and tire out the Respondent with Expensive Journeys and Delays, lodged a third Appeal before your Lordships in the same Words, with the said two former Appeals, which said Appeal is on the Pretences following, *viz.*

I. FOR that the Respondent is barred from redeeming the said Lands, although the same were not vested in the said Trustees, nor the Respondent's Father or Brother attainted, and that by the Statute of Periods, the Respondent is precluded from saying the Lands were not vested in the said Trustees, he not having filed his Bill within the two Years thereby limited, and that therefore the said Trustees Sale is final and conclusive.

II. THAT

II. THAT the *Respondent*, by the Act of the first Year of Queen *Anne*, is disabled from having any Benefit by the said Deed, made the eighth Day of *March*, 1700, he being a Papist.

III. THAT the *Appellant* is a Purchaser for a valuable Consideration of the said mortgaged Lands, and of all other Lands, in the said Deed tripartite mentioned, without any Notice of the said Deed of the eighth of *March* 1700, which Deed tripartite is an absolute Conveyance.

BUT the *Respondent* humbly insists, and is advised, that, notwithstanding these Pretences, the said Decree complained of is just and well warranted by the Rules of Equity, for these, among many other,

R E A S O N S.

BECAUSE it is admitted that no Forfeiture whatsoever was incurred by the *Respondent*, or any of his Ancestors, and that the said Act 6 *Anne* (commonly called in *Ireland* the Statute of Periods) can by no Construction be extended so far as to discharge or excuse any Purchaser from performing his own Agreement, or a Trust declared by himself, the true Intent and Meaning of that Statute being only to limit a Time for commencing Actions grounded or dormant Titles concealed from the Purchaser, but not to set aside the Purchaser's own Acts and Agreements.

II. FOR that by the said Act of the first of Queen *Anne*, no Declarations of Trust were annul'd, but such only as should be made for the Benefit of a Papist after the passing of that Act, and therefore the *Respondent* ought not to be thereby precluded from the Benefit of the said Deed of Trust, dated the 8th Day of *March* 1700, which was executed above a Year before the making of that Act.

III. FOR that the said Indenture Tripartite, dated *November* 24. 1710, was made only with an Intent to indemnify the *Appellant*, as to the said 1000 *l.* for which he became bound for his said Brother *George Eyre*, to the said Bishop of *Clonfert*; and it does not appear that the *Appellant* ever paid that Debt, or was damnified thereby if he had paid it, since that Debt, if it had not been satisfied, would have remained a Charge on the Estate settled by the *Appellant's* Grandfather, now come to, and in the *Appellant's* Possession of the Value of above 2000 *l. per Ann.* the *Appellant's* ought not therefore in that Respect to be deemed a Purchaser for a valuable Consideration; and if he ought, a proper Enquiry was directed by the Decree to know what the *Appellant* hath received out of the Estate of his said Brother *George*, which he had as a further Security, and the Profits received out of that Estate are much more than a sufficient Recompence for that Debt, if it was really ever paid by the *Appellant*, besides the Advantage the *Appellant* receives by having his settled Estate disincumbered from it.

WHEREFORE the *Respondent* humbly hopes, that the said Decree, and the said Report, shall be affirmed, and the said Appeal dismiss'd with exemplary Costs.

C. TALBOT.
D. RYDER.

JOHN EYRE, Esq; *Appellant.*
LAUGHLIN DALY, Gent. *Respondent.*

The Respondent's CASE.

To be heard at the Bar of the House of Lords,
on 11th Day of May 1730.

*Decree Reversed & the Resp^t &
App^t Dismiss'd*



